

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN J. MCCARTHY,
Petitioner

vs.

WARDEN, USP LEWISBURG,
Respondent

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: CIVIL No. 1:14-CV-1905
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O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On October 1, 2014, John McCarthy, a prisoner at United States Penitentiary Lewisburg, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1). In his petition, McCarthy challenges the conditions of his confinement and the calculation of his prison sentence. (*Id.*). Additionally, he claims that prison officials imposed discipline against him in violation of his due process rights. (*Id.*). On February 23, 2015, Magistrate Judge Carlson issued a Report and Recommendation. (Doc. 12). He recommends that we dismiss the petition because: (1) the conditions of confinement claim does not sound in habeas; (2) the abuse of writ doctrine, as well as *res judicata*, bar McCarthy's challenge to the calculation of his prison sentence; and (3) the due process claim is barred for failure to exhaust administrative remedies, and it fails on its merits. (*Id.*).

On March 5, 2015, McCarthy timely filed objections to the Report and Recommendation. (Doc. 13). His objections do not identify a specific portion of the Report and Recommendation to which he objects. Instead, he incorporates by reference

the objections he asserted to a different report and recommendation, see No. 14-CV-1910, and he incorporates by reference the arguments made in his brief.

In the absence of specific objections, we review reports and recommendations for clear error. Cruz v. Chater, 990 F. Supp. 375, 378 (M.D. Pa. 1998). Upon independent review, we find no clear error. Accordingly, we will issue an order denying relief. We will not issue a certificate of appealability since Petitioner has the right to appeal our order to the Third Circuit without a certificate. See Burkey v. Marberry, 556 F.3d 142, 146 (3d Cir. 2009).

AND NOW, this 17th day of March, 2015, upon consideration of the Report and Recommendation of Magistrate Judge Carlson (Doc. 12), filed on February 23, 2015, and Petitioner's general objections thereto, it is ordered that:

1. Chief Magistrate Judge Carlson's Report and Recommendation is ADOPTED.
2. John McCarthy's Petition for habeas corpus relief is DENIED.
3. The clerk shall close this file.

/s/William W. Caldwell
William W. Caldwell
United States District Judge